

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

RICARDO HECTOR DOMINGUEZ §  
VS. § CIVIL ACTION NO. 1:10-CV-330  
JODY R. UPTON §

**MEMORANDUM ORDER OVERRULING OBJECTIONS AND ADOPTING  
THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION**

Petitioner, Ricardo Hector Dominguez, a federal prisoner formerly confined at FCC Beaumont, proceeding *pro se*, filed this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241

The Court referred this matter to the Honorable Keith Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this Court. The Magistrate Judge recommends respondent's motion for summary judgment for failure to exhaust administrative remedies be granted.

The Court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, and pleadings. Petitioner filed objections to the Magistrate Judge's Report and Recommendation. This requires a *de novo* review of the objections in relation to the pleadings and applicable law. *See* FED. R. CIV. P. 72(b).

After careful consideration, the Court finds the objections lacking in merit. As the Magistrate Judge correctly concluded, petitioner has failed to meet his burden of demonstrating such extraordinary circumstances as would warrant waiver of the exhaustion requirement. *See Mayberry v. Pettiford*, 74 Fed. Appx. 299 (5th Cir. 2003) (citing *Fuller v. Rich*, 11 F.3d 61, 62 (5th Cir. 1994) (per curiam).<sup>1</sup>

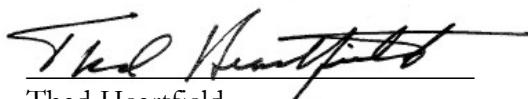
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<sup>1</sup>To the extent petitioner asserts his monetary claims pursuant to 42 U.S.C. § 1983 are ripe for consideration, those claims remained in his original suit 1:10cv313 which were dismissed without prejudice for want of prosecution on September 24, 2010. The present habeas claims were severed from the civil rights suit. If petitioner wishes to still pursue those claims, he may re-file those claims subject to the requisite \$350.00 filing fee and any defenses that may be applicable.

ORDER

Accordingly, the objections of petitioner are **OVERRULED**. The findings of fact and conclusions of law of the Magistrate Judge are correct and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendations.

**SIGNED** this the **10** day of **February, 2012**.



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Thad Heartfield  
United States District Judge